

III. Remarks

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested. Claims 1, 7 and 8 have been amended.

Allowable Subject Matter

The undersigned acknowledges the Examiner's indication of the allowability of claims 8-12, if the 35 U.S.C. §112 rejection to claim 8 is overcome. Further, the undersigned acknowledges the Examiner's indication that claims 13-17 are allowed.

Drawing Objections

Figure 1 has been amended to include reference numeral 31 referred to in the specification. Accordingly, Applicants request withdrawal of the objections to the drawings.

Double Patenting

The Examiner rejected claims 1-6 under the judicially created doctrine of double patenting based on claims 1-6 of U.S. Application 10/644,909 ('909). A Terminal Disclaimer with regard to '909 in compliance with 37 CFR 1.321(c) is attached hereto. Accordingly, Applicant requests withdrawal of the provisional double patenting rejection as moot.

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Claim Objections

Claims 1, 7, and 8 have been amended to correct the informalities objected to by the Examiner. Accordingly, Applicant respectfully requests withdrawal of the objection to claims 1, 7, and 8.

In claim 7, the Examiner suggested replacing "a braking switch" with "said braking switch". However, Applicants submit "a braking switch" for example, the pedal, has not been previously introduced in claim 7.

Claim Rejections - 35 U.S.C. § 112

Claims 8-12 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement.

The Examiner contends "de-coupling the battery from the eddy current devices at the end of the initial power interval" is neither discussed nor illustrated in the specification and drawings. However, Applicant submits support is provided on page 3, line 10-14 of the specification. Specifically, the specification recites "the step of de-coupling from the eddy current devices is included at the end of the initial power interval".

Further, the Examiner contends "coupling the generator to the eddy current devices" should be inserted in front of "then activating friction braking". Applicant submits "coupling the generator to the eddy current devices" and "then activating friction braking" are independent steps and may or may not be implemented in conjunction. As such, coupling the generator to the eddy current devices need not be inserted within claim 8. Clearly, support for separately

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activating the friction braking is provided in Figure 3, step 58 as well as, page 7, line 29, through page 8, line 8.

Accordingly, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. §112.

Claim Rejections - 35 U.S.C. §102(b)

Claim 7 was rejected under 35 U.S.C. §102(b) as being anticipated by Japanese Patent JP 10248299 to Kimura, (Kimura).

Kimura is concerned with an anti-freezing device for the retarder. The method provided by Kimura is to eliminate the freezing of the retarder prior to operation. The method provided for in Kimura is therefore implemented prior to, and separate from the detection of the braking switch. Claim 7 provides for the step of "detecting actuation of a braking switch." Accordingly, Kimura does not teach or suggest the invention as set out in claim 7. Accordingly, Applicants respectfully request withdrawal of the rejection to claim 7 under 35 U.S.C. §102.

Conclusion

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of

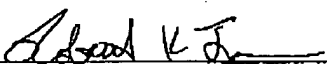


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record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted by,

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